

APPEAL NO. 020736
FILED MAY 6, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on March 11, 2002. The hearing officer resolved the disputed issues by concluding that the appellant (claimant) did not sustain a compensable injury on _____, and that she did not have disability. In her appeal, the claimant essentially argues that those determinations are against the great weight of the evidence. The claimant also asserts error in the hearing officer's having permitted a witness for the respondent (carrier) to testify because his name was not timely exchanged. In its response, the carrier urges affirmance.

DECISION

Affirmed.

The claimant testified that she injured her back when she drove a motorized pallet jack, also known as a PE, over a crack or hole in the floor causing the PE to bounce and jar her back. A medical report dated _____, reflects that the claimant was diagnosed with sciatica and cervical and lumbar sprains. The claimant testified that she has not worked since October 25, 2001.

The claimant had the burden of proving that she sustained a compensable injury as claimed. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). Whether she did so was a question of fact for the hearing officer to decide. Texas Workers' Compensation Commission Appeal No. 93449, decided July 21, 1993. Section 410.165(a) provides that the hearing officer is the sole judge of the weight and credibility of the evidence. The hearing officer was not persuaded by the claimant's evidence that the claimant carried her burden of proving that she sustained a compensable injury, and the hearing officer was acting within his province as the fact finder in so assessing the credibility of the evidence before him. We will reverse a factual determination of a hearing officer only if that determination is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust and we do not so find here. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986).

Given our affirmance of the determination that the claimant did not sustain a compensable injury, we likewise affirm the determination that she did not have disability. Under the 1989 Act, the existence of a compensable injury is a prerequisite to a finding of disability. Section 401.011(16).

Finally, the claimant argues that the hearing officer erred in permitting the employer's representative to testify. The claimant did not object to this testimony at the hearing. As such, she did not preserve error for purposes of appeal.

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **AMERICAN HOME ASSURANCE COMPANY** and the name and address of its registered agent for service of process is

**LLOYD HOFFMAN
HOFFMAN KELLEY, LLP
600 N. PEARL ST. #600
DALLAS, TEXAS 75202.**

Elaine M. Chaney
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Robert W. Potts
Appeals Judge